



## IUCN Briefing for BBNJ negotiators

# Principles and Approaches, Part I, Article V

**Key Messages:** Because principles and approaches provide guidance for the BBNJ agreement's commitments, agreeing on this section will bring coherence to the other parts. Some of the most important principles and approaches are discussed here; IUCN supports others that are not the focus of this briefing note. Principles and approaches complement the need for clear obligations in the other parts of the BBNJ Agreement. Principles, approaches and obligations together support achieving critical goals, like the 30x30 protection of the high seas as effectively managed and equitably governed, including all key biodiversity areas; and sustainability of use.

### 1. Common concern

**Why?** The principle of common concern recognizes that the international community has shared interests that can only be addressed by collective action. Recognizing that the biodiversity of areas beyond national jurisdiction (ABNJ) can only be protected through cooperation is the keystone of the BBNJ Agreement. The common concern principle is already recognized in the Convention on Biological Diversity, which states that 'conservation of biological diversity is a common concern of humankind', and the preamble of the UNFCCC stating that 'change in the Earth's climate and its adverse effects are a common concern of humankind'; it is also referenced in the Paris Agreement preamble.

**How?** Including in Article V new text, drawn from IUCN resolution 126 (2021) as follows:

**The ocean in areas beyond national jurisdiction is a common concern of humankind and it should be protected as one ocean**

### 2. Transparency and access to information

**Why?** In the shared ocean, information about planned and ongoing activities, physical and biological conditions is vital. Environmental impact assessment in particular is concerned with information, participation and transparency of decision-making;

**How?** In addition to the specific provisions for notice, access to information, and consultation in the BBNJ Agreement, the Principles should include:

**Parties shall promote transparency in decision making processes and other activities carried out under this Agreement**

### 3. Precaution

**Why?** Much is still unknown about the world's ocean and the impacts of human activities on its biodiversity. In the case of such uncertainty, precaution is paramount. A key implication of a precautionary principle or approach is shifting of the burden to the proponent of an activity to show that it does not cause harm, e.g. in evaluation of EIAs.

**How?** Precaution in the BBNJ Agreement could be based on UN Fish Stocks Agreement, Article 6, and

the Convention on Biological Diversity, informed by IUCN guidelines, filling in the placeholder text as follows:

(e) **Precaution:** The precautionary [principle] [approach]; **States shall apply precaution widely in order to conserve marine biodiversity and preserve the marine environment, particularly when information is uncertain, unreliable or inadequate. Where there is a threat of serious or irreversible damage or significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.**

#### 4. Obligations to future generations

**Why?** The health of the ocean will be essential for ensuring a planet fit for human habitation now and in the future. Unsustainable use of marine biodiversity endangers the lives and wellbeing of future generations, who have no option to participate in our decisions today. The principle of intergenerational equity recognizes the rights of each generation to use and enjoy the natural resources of the planet, and the corresponding duty to preserve these resources for the future. Intergenerational equity has been consistently recognized as an important principle in international law, *inter alia* in the Stockholm Declaration (principles 1, 2), the Rio Declaration (principle 3), the UNECE Water Convention (art. 2.5(c)), the Convention on Biological Diversity (preamble, art. 2), the UNFCCC (art. 3) and the World Heritage Convention (art. 4).

**How?** Add the following principle, based on text in the UNFCCC, Article 3 and the CBD preamble:

**Parties should conserve and sustainably use marine biological diversity for the benefit of present and future generations of humankind.**

#### 5. Non-regression

**Why?** The principle of non-regression creates an obligation not to rescind or downgrade existing levels of environmental protection. It is an important concept in environmental law in order to prevent backsliding and associated potentially catastrophic long-term consequences in favor of short-term interests. It is related to the concept of progression, established under the UNFCCC, which requires Parties to continuously increase their efforts to achieve the purpose of the agreement over time (art. 3), and the established principle of progressive realization of human rights. Adopting the principle of non-regression in the BBNJ agreement would support long term planning and reliance on measures to support sustainable use and conservation of marine biodiversity now and in the future.

**How?** Add the following principle, based on text in the IUCN World Declaration on the Environmental Rule of Law:

**Parties shall not allow or pursue actions that have the net effect of diminishing the legal protection of the marine environment.**

#### 6. Polluter-pays

**Why?** This principle provides incentives for actors in ABNJ to prevent pollution. It is equitable: innocent parties should not bear the burden of losses that they did not cause. The polluter pays principle places the cost of both chronic and accidental environmental harm on the responsible entity. For example, States have the direct obligation to ensure the availability of recourse for compensation in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction, under UNCLOS, article 235(2), Part XI.

**How?** Revise and include the polluter pays principle:

**Article 5 (b)** [~~The polluter pays principle~~][~~The endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should [, in principle,] bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment~~];, **by virtue of which costs of environmental harm prevention, control and reduction measures and reparation of harm that does occur, including loss of intrinsic value, shall be borne by the polluter.**

## 7. Ecosystem Approach

**Why?** In the context of ABNJ, the recognition of the ecosystem approach is important in order to promote more integrated management of ABNJ ecosystems. This is necessary to overcome the artificial distinction between the water column and the seabed which is unjustified from a natural science perspective; and to take into account the cumulative impacts of different human activities taking place in ABNJ. While UNCLOS (and the legal framework for oceans governance in general) is largely based on a sectoral approach, basis for a cross-sectoral approach can be found in different parts of the Convention, such as the Preamble which states that ‘the problems of ocean space are closely interrelated and need to be considered as a whole’. The ecosystem approach can also be applied in a sectoral context; ecosystem-based governance takes actual ecosystems or spatial areas as the starting point for governance, regardless of the superimposed jurisdictional delineations.

**How?** Accept the current proposed integrated approach with the addition of a reference to the ecosystem approach:

**Article 5** [(a) Apply an integrated **and ecosystem** approach [~~principle~~];]

**For more information, see:**

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